IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 174 of 2004

WITH

COMPANY PETITION No 175 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURYA LAMINATIONS PVT. LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 174,175 of 2004

MR AR MAJMUDAR for Petitioners.

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 02/03/2005

COMMON ORAL JUDGEMENT

These two petitions have been filed by two different petitioner Companies seeking sanction of a scheme of Amalgamation of Surya Laminations Private Limited (Transferor Company) with Amod Stampings Private Limited (Transferee Company) under Section 391 read with Section 394 of the Companies Act, 1956.

2. The amalgamation was proposed for the purpose of earning higher profits by higher turnover by making utilisation of idle manufacturing facilities of Transferee Company and thereby it shall increase the shareholder value in aggregate. It is also stated that the amalgamation shall also enable the petitioner Company to tap the unexploited opportunities till date and by this the petitioner Company will be able to increase the market share.

3. The meetings of the shareholders of both the Companies and the meeting of the Creditors of the Transferor Company were dispensed with by an order of this Court passed in Company Application Nos. 214 & 215 of 2004 on 13.07.2004.

4. After the petitions were admitted, the same were duly advertised in the newspapers, namely, "Indian Express" - English daily - Vadodara edition and "Loksatta" - Gujarati daily - Vadodara edition. Publication of the advertisement in the Official Gazette was dispensed with. No one has come forward with any objection to the petitions even after publication of the advertisements.

5. Notice of admission of the petition of Transferor company was served on the O.L. attached to this Court. He has placed on record his report dated 24.01.2005 along with the report of the Auditor appointed for the purpose of scrutiny and investigation. The report states that the affairs of the Amalgamating Company are not conducted in a manner prejudicial to the interest of the members of the Company and/or the public at large.

6. Notice of admission of the petition of the Transferor Company and Transferee Company has been served on the Central Government and Mr. Jitendra Malkan, learned Senior Central Government Standing Counsel appears for the Central Government. He has placed on record the communication received from the Regional Director dated 27.12.2004. It appears from the said letter that the Regional Director has raised the following objections :-

(i) The present authorised capital of the Transferee Company is not adequate to fulfill the obligation and to allot the shares as per the ratio fixed in the Scheme. Therefore, the company has to increase its Authorised Capital and file Form No. 5 with the Registrar of Companies with Central Govt. Fees in addition to payment of Stamp Duty, as required under Section 97 of the Companies Act, 1956.

(ii) The proposal made in clause (1.1) of PART III of the scheme regarding automatic increase of Authorised Capital from Rs. 2 Crores to Rs. 3 Crores is objectionable. The increase of Authorised Capital should be subject to compliance of Section 94/97 of the Companies Act, 1956 and consequent alteration to the capital clause of the Memorandum and Articles of Association of the transferee company should also be subject to compliance of Section 31/16/192 of the Companies Act, 1956.

(iii) The transferee company is required to comply with Section 75 of the Companies Act, 1956 in respect of allotment of new shares to the shareholders of the transferor companies pursuant to the scheme.

(iv) No dispensation of meeting of the creditors of the transferor company has been obtained from the Hon'ble High Court.

(v) The petitioner companies are required to disclose the latest financial position as per the Balance Sheet as at 31.03.2004 to the Hon'ble High Court pursuant to the proviso to Section 391(2) of the Companies Act, 1956.

(vi) With reference to clause (2.1) of Part IV of the Scheme, the petitioner Companies are expected to pass Board resolution to extend the period beyond the date 31.10.2004 earlier fixed to get the scheme sanctioned.

7. With regard to the objection Nos. 1,2 & 3, Mr. A.R. Majmudar, learned advocate appearing for the petitioner has placed on record the affidavit filed by Navin N. Patel, Director of Amod Stampings Private Limited wherein it is stated that the Company will follow the procedure prescribed U/s. 94 of the Companies Act, 1956 for increase in Authorised Capital and shall pay the

required stamp duty and filing fees as per Schedule X to the Companies Act, 1956 payable for the same before allotment of shares under the Scheme. Even otherwise, the concept of Single window clearance is now judicially recognised.

8. With regard to objection No. 4, Mr. Majmudar has submitted that it is not true and correct that no dispensation of meeting of the creditors of the transferor company has been obtained from this Court. As a matter of fact, in the order passed by this Court, it is clearly stated that the meeting of the Creditors is also dispensed with.

9. With regard to objection No.5, Mr. Majmudar has placed on record the latest Balance-Sheet of the Company as on 31.03.2004 and with regard to objection No.6, he has placed on record the Resolutions passed by both the Companies with regard to extension of time.

10. Since all the objections raised by the Regional Director have been duly explained and satisfied, Mr. A.R. Majmudar has submitted that the Scheme be sanctioned.

11. Except the above objections, no other objections were raised and in view of the aforesaid fact situation, it is apparent that the amalgamation would be in the interest of the Companies and their members and Creditors. There is no reason to withhold sanction to the Scheme of Amalgamation. Prayers in terms of paragraph 19.1 of the petitions is hereby granted to the effect that the arrangement embodied in the Scheme (Annexure 'C') is hereby sanctioned so as to be binding on all Members, Shareholders and other persons concerned under the Scheme of amalgamation of the Companies with effect from the appointed date.

12. These petitions stand disposed of accordingly. The cost to be paid to the Senior Central Government Standing Counsel are quantified at Rs. 3,500/- per petition and the same may be paid to the learned Senior Central Government Standing Counsel Mr. Jitendra Malkan.

[K.A. PUJ, J.]

#Savariya#

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